as being nevertheless regulations governing service made under the two sections afore-mentioned.

Section 22(1) of the Interpretation and General Clauses Ordinance, 1948, which was still in force at the time of the issue of this circular, states that all subsidiary legislation shall be published in the *Gazette*, unless it is otherwise expressly provided in such Ordinance. There being no such express provision in the RIDA Ordinance, 1953, circular No. 12 of 1964 is therefore not subsidiary legislation and cannot in my view be the sort of rule or regulation which because of section 39(1) of the MARA Act is continued in force.

However, the main issue at law to be decided is whether the MARA can superimpose upon the terms of service of its employees the provisions of Chapter C. of the General Orders of Malaysia and regulations made under the MARA Act 1966, to the exclusion of the appropriate provisions in the Employment Ordinance, 1955.

Section 7 of the Employment Ordinance, 1955 reads as follows: —

"7. Except as provided in section 6 of this Ordinance, no condition of any contract of service shall be contrary to the provisions of this Ordinance and any such condition which is contrary to such provisions shall be void and of no effect."

The proviso to section 6 of that Ordinance is not applicable in the present appeal.

MARA is as section 3 of the Act makes it clear, merely a statutory corporation. Section 63 of the Interpretation and General Clauses Act 1967, which is substantially the same as section 55 of the 1948 Ordinance, states that no written law shall in any manner affect the rights *inter alia* of the Government unless it is especially provided or it appears by necessary implication that Government is bound thereby, cannot apply to exclude this statutory corporation which is not the Government from the operation of the Employment Ordinance, 1955. Whereas there appears to me nothing to prevent MARA from adopting Chapter C. of the General Orders of Malaysia and provision of that chapter of the General Orders thereby made applicable to the conditions of service of MARA employees which happens to be contrary to the provisions of the Employment Ordinance, 1955 will by virtue of section 7 of that Ordinance be void to that extent.

It may be argued that under section 10(1) of the MARA Act the Majlis "may appoint on such terms and conditions as the Majlis may think desirable such servants as may be necessary for the carrying out of the purposes of the Act", and that the powers thereby given would exclude the operation of the Employment Ordinance.

But the general maxim is *generalia specialibus non derogant*.

As was said in *Seward* v. *The Vera Cruz*[1]

"where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

Again as Lord Hobhouse commented in the Privy Council decision of *Barker* v. *Edger & Ors.*[2]

"When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly."

Nowhere in the Majlis Amanah Ra'ayat Act 1966 is there any manifest provision which would tend to indicate that Parliament intended to repeal, alter or derogate from the special provisions of the Employment Ordinance 1955. This appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Ng Ek Teong, Zain & Selvarajah.*

WONG KON POH v. NEW INDIA ASSURANCE CO. LTD.

[A.C.J. (Yong J.) June 29, 1970]

[Kuala Lumpur — Civil Appeal No. 19 of 1969]

Insurance — Motor insurance — Risk against theft — Whether loss by robbery covered by policy — Whether "theft" is synonymous with "robbery".

This was an appeal against the order of the magistrate dismissing the appellant's claim made under a policy of insurance for the loss of his motor cycle which was taken from him in his presence and against his will by four men. The magistrate held that this was robbery and that the loss was not caused by any of the perils insured against. The relevant part of the policy read: "The company will indemnify the insured against loss of or damage to the motor vehicle and its accessories and spare parts whilst thereon. (b) by fire external explosion self-ignition or lighting or burglary, housebreaking or theft."

The question put to the court was whether the word "theft" as used in the policy was synonymous with the word "robbery" and on the evidence before the court whether the magistrate was justified in finding that the loss was caused by robbery and not by theft.

Held, dismissing the appeal: (1) the words "theft" and "robbery" are not synonymous;

(2) the magistrate was right in holding that the loss was due to robbery and not theft.

Cases referred to:-

(1) *Roberts* v. *Anglo-Saxon Insurance Association Ltd.* (1927) 43 T.L.R. 496.

(2) *Leo Rapp Ltd.* v. *McClure* [1955] 1 Ll. Rep. 295.

CIVIL APPEAL.

Teoh Hooi Leong for the appellant.

M. S. Naidu for the respondents.

Yong J.: This is an appeal against the order of the magistrate dismissing the appellant's claim made under a policy of insurance for the loss of his motor cycle which was taken from him in his presence and against his will by four men. The magistrate held that this was robbery and that the loss was not caused by any of the perils insured against.

The relevant part of the policy was paragraph 1(b) of section 1 which reads: —

"1. The company will indemnify the insured against loss of or damage to the motor vehicle and its accessories and spare parts whilst thereon

(b) by fire external explosion self-ignition or lighting or burglary, housebreaking or theft."

The question now put to this court is whether the word "theft" as used in the policy is synonymous with the word "robbery" and on the evidence before the court whether the magistrate was justified in finding that the loss was caused by robbery and not by theft.

To answer this question it is relevant to examine the first information report made by the appellant to the police. In this report he alleged that while bathing in a pool in Templer Park, four men came up to him, and one of them asked him for cigarettes. He got out of the pool, took his cigarettes from his shirt pocket and gave them to him. The four men then asked him whether he belonged to any gang and on receiving a negative reply, one of them searched and took away from his trousers pocket $5 in cash and the switch key of his motor cycle, which they then drove away. They warned the appellant not to report to the police and the appellant did not resist them from taking away his motor cycle because he was frightened. In court he testified that the four men had robbed him of his motor cycle and under cross-examination he further confirmed that the "motor cycle was robbed from me."

On this evidence I am certainly not prepared to find that the magistrate was not justified in coming to the conclusion as he did; on the contrary I think he was right in holding that the loss was due to robbery and not theft.

The word "theft" in its ordinary and popular sense in Malaysia means the felonious taking of another person's articles or goods without his knowledge and consent, and in robbery such taking is carried out with his knowledge and consent given through fear or violence; in robbery such act is done in his presence and against his will, and in theft it was carried out surreptitiously. In my view the words "theft" and "robbery" are not synonymous.

The appellant's counsel contended that these two words should be given their legal and technical meaning. In my opinion, even if they are given such an interpretation it would still be legally inaccurate to call a robbery a theft, and a theft a robbery. Theft is theft and becomes robbery only if certain additional ingredients are present in the offence such as that the offender has in addition to the commission of theft, voluntarily caused or attempted to cause to that person death, hurt, or wrongful restraint or fear of instant death, hurt, or wrongful restraint. A comparison of the definitions of theft and robbery under sections 378 and 390 of the Penal Code clearly gives their distinctions and differences. It is true that theft is an essential element in the offence of robbery but nevertheless robbery is not theft. It is a much more serious offence than theft. The magistrate has correctly found on the evidence before him that the offence disclosed by the evidence was robbery and not theft.

The appellant's counsel ingeniously argued that robbery was an aggravated form of theft and therefore came within the purview of the policy. In reply counsel for the respondents contended that such aggravated form of theft which amounted to robbery was a risk not included in the policy. In my opinion there is substance in this contention. The risk involved in theft is different from and less serious than the risk in robbery. The insurance premium for one would be different from the other.

My view of the case is this. The appellant had accepted the policy and had sued on it without reservations. In this policy the respondents limited their liability to loss of the motor vehicle by "fire external explosion self-ignition or lighting or burglary, housebreaking or theft." Unless the appellant can strictly bring himself within the orbit of these limitations his claim must fail. According to *Shawcross on Insurance* (2nd Edn. at p. 496):

"Any risk which does not answer to the description in the policy is not covered by the policy and if such a risk materialises into a loss no claim in respect of it can be made by the assured under the policy."

A case in point was *Roberts* v. *Anglo-Saxon Insurance Association Limited*,[1] in which Roberts the respondent insured his motor-car with the appellants by a policy based on the statement that the motor-car was to be used for commercial travelling. The motor-car caught fire and was destroyed while being used to carry passengers. It was held that the statement that the motor-car was to be used for commercial travelling was descriptive of the risk that was insured and that when it was destroyed while carrying passengers that was a risk not covered by the policy.

Another case illustrative of the aforesaid principle was *Leo Rapp Ltd.* v. *McClure*.[2] There, stocks of metal were insured against "theft while in warehouse anywhere in the United Kingdom." Some metal was loaded on to a lorry parked in an open space in a locked compound enclosed by a thick brick wall topped by barbed wire, and was stolen. It was held the loss was not covered by the policy because the theft did not occur while in a warehouse.

In the instant case the loss was caused by robbery a risk which does not answer to the description in the policy.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Teoh & Foo; Braddell & Ramani.*